

Eric L. Troff, Esq., CSB #110031
BAER & TROFF, LLP
35 N. Lake Avenue, Ste. 670
Pasadena, CA 91101
(310) 802-4202 telephone
(626) 568-2800 facsimile

Attorneys for Defendants
Decision Diagnostics, fka Instacare Corp., and
PharmaTech Solutions, Inc.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GOTHAM INSURANCE COMPANY,)

Plaintiff in Interpleader,)

vs.)

SHASTA TECHNOLOGIES, LLC,
INSTACARE CORP. and
PHARMATECH SOLUTIONS, INC.)

Defendants in Interpleader.)

Case No.: 5:13-CV-03810-BLF

SECOND AMENDED ANSWER OF
DECISION DIAGNOSTICS, INC, fka
INSTACARE AND PHARMATECH
SOLUTIONS, INC. TO PLAINTIFF'S
FIRST AMENDED COMPLAINT.

COMES NOW PharmaTech Solutions, Inc. and Decision Diagnostics, Inc., fka
Instacare Corp. (hereafter collectively referred to as "PharmaTech") who answer
Plaintiff's First Amended Complaint as follows.

JURISDICTION

1. In answer to the allegations contained in Paragraph 1 of Plaintiffs First
Amended Complaint in Interpleader, these Answering Defendants admit the allegations
contained therein.

1 2. In answer to the allegations contained in Paragraph 2 of Plaintiffs First
2 Amended Complaint in Interpleader, these Answering Defendants admit that they are
3 named defendants in the Referenced action of Case No. CV 11-04494 (the "Underlying
4 Litigation"), and that they have appeared in that action. Except as expressly admitted,
5 the allegations of this paragraph are denied.

6
7 **THE PARTIES**

8 3. In answer to the allegations contained in Paragraph 3 of Plaintiff's First
9 Amended Complaint in Interpleader, these Answering Defendants lack sufficient
10 information or knowledge upon which to predicate an answer thereto, and based
11 thereon, deny, generally and specifically each of the allegations contained therein.

12 4. In answer to the allegations contained in Paragraph 4 of Plaintiff's First
13 Amended Complaint in Interpleader, these Answering Defendants lack sufficient
14 information or knowledge upon which to predicate an answer thereto, and based
15 thereon, deny, generally and specifically each of the allegations contained therein.

16 5. In answer to the allegations contained in Paragraph 5 of Plaintiff's First
17 Amended Complaint in Interpleader, these Answering Defendants admit that Decision
18 Diagnostics, Inc., fka InstaCare Corp., maintains an office at the street address
19 identified in Paragraph 5, and that Decision Diagnostics is incorporated under the law;
20 of the State of Nevada. Except as expressly admitted or alleged, these Answering
21 Defendants deny, generally and specifically, each of the allegations contained therein.

22 6. In answer to the allegations contained in Paragraph 6 of Plaintiff's First
23 Amended Complaint in Interpleader, these Answering Defendants admit that
24 PharmaTech Solutions, Inc. maintains an office at the street address identified in
25 Paragraph 6, and that PharmaTech Solutions is incorporated under the laws of the State
26 of Nevada. Except as expressly admitted or alleged, these Answering Defendants deny,
27 generally and specifically, each of the allegations contained therein.

INTERPLEADER

7. In answer to the allegations contained in Paragraph 7 of Plaintiff's First Amended Complaint in Interpleader, Answering Defendants admit that the document attached to the First Amended Complaint in Interpleader as Exhibit 1 and referenced in Paragraph 7 thereof is an insurance policy issued by Plaintiff Gotham Insurance Company, and that the document speaks for itself. Except as expressly admitted or alleged, these Answering Defendants deny, generally and specifically, each of the allegations contained therein.

8. In answer to the allegations contained in Paragraph 8 of Plaintiff's First Amended Complaint in Interpleader, these Answering Defendants admit that the insurance policy is attached to the First Amended Complaint in Interpleader as Exhibit 1, and that the document speaks for itself. Except as expressly admitted or alleged, these Answering Defendants deny, generally and specifically, each of the allegations contained therein.

9. In answer to the allegations contained in Paragraph 9 of Plaintiff's First Amended Complaint in Interpleader, these Answering Defendants admit that each is an insured under the referenced insurance policy. Except as expressly admitted or alleged, these Answering Defendants deny generally and specifically, each of the allegations contained therein.

10. In answer to the allegations contained in Paragraph 10 of Plaintiff's First Amended Complaint in Interpleader, these Answering Defendants admit that the insurance policy is attached to the First Amended Complaint in Interpleader as Exhibit 1, that it appears to be a complete copy, and that the document speaks for itself. Except as expressly admitted or alleged, these Answering Defendants deny, generally and specifically, each of the allegations contained therein.

11. In answer to the allegations contained in Paragraph 11 of Plaintiff's First Amended Complaint in Interpleader, these Answering Defendants allege that Plaintiff

1 claims an interest in the Proceeds of the Policy, claim the right to control the disbursement
2 of the proceeds, and that Plaintiff is not an disinterested stakeholder of the proceeds of
3 the policy. These Answering Defendants further allege that Gotham has not reserved its
4 rights to seek return of the proceeds paid in connection with the defense of the
5 Underlying Lawsuit, nor is it entitled to do so under either the terms and conditions of
6 the Policy or the Settlement Agreement, and further allege that Plaintiff is not entitled to
7 cease payments for the cost of defense in that litigation. Except as expressly admitted or
8 alleged, these Answering Defendants deny, generally and specifically, each of the
9 allegations contained therein.

10 12. In answer to the allegations contained in Paragraph 12 of Plaintiff's First
11 Amended Complaint in Interpleader, these Answering Defendants allege that the
12 amount of the proceeds remaining and available under the Policy is believed to be
13 \$578,733.58, and that the total amount remaining to be paid to these Answering
14 Defendants by way of defense reimbursement is believed to be in excess of the
15 remaining proceeds. These Answering Defendants further allege that the remaining
16 proceeds, whatever they may be, are not the subject of reimbursement to Gotham under
17 either the Settlement Agreement or the terms and conditions of the Policy, and that such
18 remaining proceeds should be deposited in cash with the Court. Except as expressly
19 admitted or alleged these Answering Defendants deny, generally and specifically, each
20 of the allegations contained therein.

21 13. In answer to the allegations contained in Paragraph 13 of Plaintiff's First
22 Amended Complaint in Interpleader, these Answering Defendants admit that they seek
23 the Proceeds authorized by the policy as costs of defense in the Underlying Lawsuit,
24 and allege that they have incurred defense costs in reliance on the proceeds of the
25 Policy. Except as expressly admitted or alleged, these Answering Defendants deny,
26 generally and specifically, each of the allegations contained therein.

1 14. In answer to the allegations contained in Paragraph 14 of Plaintiff's First
2 Amended Complaint in Interpleader, these Answering Defendants admit that the
3 Defendants in Interpleader have made claims to the Proceeds authorized by the Policy,
4 and allege that Plaintiff has also made claims to the Proceeds authorized by the Policy.
5 Except as expressly admitted or alleged, these Answering Defendants deny, generally
6 and specifically, each of the allegations contained therein.

7 15. In answer to the allegations contained in Paragraph 15 of Plaintiff's First
8 Amended Complaint in Interpleader, these Answering Defendants admit that on or
9 about June 1, 2012, Plaintiff in Interpleader commenced an Interpleader Action
10 (Interpleader I) against the same Defendants in this action, to resolve conflicting claims
11 between the Named Insureds to the Proceeds.

12 16. In answer to the allegations contained in Paragraph 16 of Plaintiff's First
13 Amended Complaint in Interpleader, these Answering Defendants admit that on or
14 about September 6, 2012, the parties to Interpleader I reached a settlement agreement,
15 and that a true and correct copy of the Settlement Agreement is attached to Plaintiff's
16 First Amended Complaint in Interpleader as Exhibit 3. These Answering Defendants
17 further allege that the terms and conditions of the Settlement Agreement speak for
18 themselves. Except as expressly admitted or alleged, these Answering Defendants deny,
19 generally and specifically, each of the allegations contained therein.

20 17. In answer to the allegations contained in Paragraph 17 of Plaintiff's First
21 Amended Complaint in Interpleader, these Answering Defendants allege that any
22 Proceeds paid pursuant to the terms and conditions of the Policy and the Settlement
23 Agreement, were paid by Gotham directly to the attorneys approved by Gotham for the
24 defense of the Underlying Litigation. These Answering Defendants are informed and
25 believe, and based thereon allege that Plaintiff has in fact paid the sum set forth in
26 Paragraph 17. Except as expressly admitted or alleged, these Answering Defendants
27 deny, generally and specifically, each of the allegations contained therein.

1 18. In answer to the allegations contained in Paragraph 18 of Plaintiff's First
2 Amended Complaint in Interpleader, these Answering Defendants admit that despite the
3 payment of Proceeds in accordance with the Settlement Agreement of Interpleader I,
4 Shasta has asserted new demands for payment of more than its fair share of the
5 Proceeds, which conflicts with the rights of these Answering Defendants, pursuant to
6 the terms and conditions of the Settlement Agreement and the Policy. Except as
7 expressly admitted or alleged, these Answering Defendants deny, generally and
8 specifically, each of the allegations contained therein.

9 19. In answer to the allegations contained in Paragraph 19 of Plaintiff's First
10 Amended Complaint in Interpleader, these Answering Defendants allege that Gotham is
11 able to determine the validity of the conflicting claims made by the Defendants in
12 Interpleader, and can determine to whom the remaining proceeds of the Policy should
13 be paid. Except as expressly admitted or alleged, these Answering Defendants deny,
14 generally and specifically, each of the allegations contained therein.

15 20. In answer to the allegations contained in Paragraph 20 of Plaintiff's First
16 Amended Complaint in Interpleader, these Answering Defendants allege that while
17 Plaintiff may have incurred costs and attorneys' fees in this action, it did so for its own
18 account and for the purposes of protecting its own interests in the Proceeds of the
19 Policy, as alleged by Plaintiff in paragraph 11 of this First Amended Complaint in
20 Interpleader. Except as expressly admitted or alleged, these Answering Defendants
21 deny, generally and specifically, each of the allegations contained therein.

22
23 **SECOND CAUSE OF ACTION FOR**
24 **DECLARATORY RELIEF AGAINST ALL DEFENDANTS**
25 **EXCEPT KNICKERBOCKER**

26 21. In answer to the allegations contained in Paragraph 21 of Plaintiff's First
27 Amended Complaint in Interpleader, these Answering Defendants Incorporated by
28

1 reference their answers to paragraphs 1 through 20 of this First Amended Complaint, as
2 though fully set forth at length herein.

3 22. In answer to the allegations contained in Paragraph 22 of Plaintiff's First
4 Amended Complaint in Interpleader, these Answering Defendants deny generally and
5 specifically, each, every, and all the allegations contained therein, and allege that
6 Gotham's own investigation allowed it to determine to whom the Proceeds of the Policy
7 should be paid, and that in fact throughout the course of the Underlying Lawsuit,
8 Plaintiffs investigation allowed it to appropriately disperse the proceeds in the defense
9 of that lawsuit.

10 23. In answer to the allegations contained in Paragraph 23 of Plaintiff's First
11 Amended Complaint in Interpleader, these Answering Defendants admit that an actual
12 controversy has arisen between the parties hereto with respect to the Proceeds due under
13 the Policy and the settlement Agreement of Interpleader I. Except as expressly admitted
14 or alleged, these Answering Defendants deny, generally and specifically, each of the
15 allegations contained therein.

16
17 **THIRD CAUSE OF ACTION FOR BREACH**
18 **OF THE WRITTEN SETTLEMENT AGREEMENT**
19 **IN INTERPLEADER I AGAINST DEFENDANT SHASTA ONLY**

20 24. In answer to the allegations contained in Paragraph 24 of Plaintiff's First
21 Amended Complaint in Interpleader, these Answering Defendants Incorporated by
22 reference their answers to paragraphs 1 through 23 of this First Amended Complaint, as
23 though fully set forth at length herein.

24 25. In answering the allegations of Paragraph 25 of Plaintiff's First Amended
25 Complaint, Answering Defendants admit the allegations contained therein.

1 26. In answering the allegations in paragraph 26 of Plaintiff's First Amended
2 Complaint in Interpleader, Answering Defendants admit the allegations contained
3 therein.

4 27. In answering the allegations in paragraph 27 of Plaintiff's First Amended
5 Complaint in Interpleader, Answering Defendants admit the allegations contained
6 therein.

7 28. In answer to the allegations contained in Paragraph 28 of Plaintiff's First
8 Amended Complaint in Interpleader, these Answering Defendants lack sufficient
9 information or knowledge upon which to predicate an answer thereto, and based
10 thereon, deny, generally and specifically each of the allegations contained therein.

11
12 **FOURTH CAUSE OF ACTION FOR**
13 **PROMISE MADE WITH NO INTENTION OF PERFORMING**
14 **AGAINST DEFENDANTS SHASTA, KNICKERBOCKER AND CAL JR.**

15 29. In answer to the allegations contained in Paragraph 29 of Plaintiff's First
16 Amended Complaint in Interpleader, these Answering Defendants Incorporated by
17 reference their answers to paragraphs 1 through 28 of this First Amended Complaint, as
18 though fully set forth at length herein.

19 30. In answer to the allegations contained in Paragraph 30 of Plaintiff's First
20 Amended Complaint in Interpleader, these Answering Defendants lack sufficient
21 information or knowledge upon as to what Plaintiff believed, and based thereon, deny,
22 generally and specifically each of the allegations contained therein. Answering
23 Defendants, however, are informed and believe, and on such basis allege, that the
24 remaining allegations of Paragraph 30 with respect to Shasta, Knickerbocker and Cal.
25 Jr. are true.

26 31. In answer to the allegations contained in Paragraph 31 of Plaintiff's First
27 Amended Complaint in Interpleader, these Answering Defendants lack sufficient
28

1 information or knowledge upon as to what Plaintiff believed, and based thereon, deny,
2 any such allegations of Plaintiff's belief's contained therein. Defendants are informed
3 and believe, however, that the remaining allegations of Paragraph 31 are true.

4 32. In answer to the allegations contained in Paragraph 32 of Plaintiff's First
5 Amended Complaint in Interpleader, these Answering Defendants lack sufficient
6 information or knowledge upon as to what Plaintiff believed, and based thereon, deny,
7 generally and specifically each of the allegations contained therein.

8 33. In answer to the allegations contained in Paragraph 33 of Plaintiff's First
9 Amended Complaint in Interpleader, these Answering Defendants admit the allegations
10 contained therein.

11
12 **FIFTH CAUSE OF ACTION FOR FRAUD**
13 **AGAINST DEFENDANTS SHASTA, KNICKERBOCKER AND CAL JR.**

14 34. In answer to the allegations contained in Paragraph 34 of Plaintiff's First
15 Amended Complaint in Interpleader, these Answering Defendants Incorporated by
16 reference their answers to paragraphs 1 through 33 of this First Amended Complaint, as
17 though fully set forth at length herein.

18 35. In answer to the allegations contained in Paragraph 35 of Plaintiff's First
19 Amended Complaint in Interpleader, these Answering Defendants lack sufficient
20 information or knowledge upon as to what Plaintiff believed, and based thereon, deny,
21 any such allegations of Plaintiff's belief's contained therein. Defendants are informed
22 and believe, however, that the remaining allegations of Paragraph 35 are true.

23 36. In answer to the allegations contained in Paragraph 36 of Plaintiff's First
24 Amended Complaint in Interpleader, these Answering Defendants admit that a true and
25 correct copy of the Policy is attached to Plaintiff's First Amended Complaint in
26 Interpleader as Exhibit 1. These Answering Defendants further allege that the terms and
27 conditions of the Settlement Agreement speak for themselves. Except as expressly
28

1 admitted or alleged, these Answering Defendants deny, generally and specifically, each
2 of the allegations contained therein.

3 37. In answer to the allegations contained in Paragraph 37 of Plaintiff's First
4 Amended Complaint in Interpleader, these Answering Defendants admit that a true and
5 correct copy of the Policy is attached to Plaintiff's First Amended Complaint in
6 Interpleader as Exhibit 1. These Answering Defendants further allege that the terms and
7 conditions of the Settlement Agreement speak for themselves. Except as expressly
8 admitted or alleged, these Answering Defendants deny, generally and specifically, each
9 of the allegations contained therein.

10 38. In answer to the allegations contained in Paragraph 38 of Plaintiff's First
11 Amended Complaint in Interpleader, these Answering Defendants admit that a true and
12 correct copy of the Policy is attached to Plaintiff's First Amended Complaint in
13 Interpleader as Exhibit 1. These Answering Defendants further allege that the terms and
14 conditions of the Settlement Agreement speak for themselves. Except as expressly
15 admitted or alleged, these Answering Defendants deny, generally and specifically, each
16 of the allegations contained therein.

17 39. In answer to the allegations contained in Paragraph 39 of Plaintiff's First
18 Amended Complaint in Interpleader, these Answering Defendants admit that a true and
19 correct copy of the Policy is attached to Plaintiff's First Amended Complaint in
20 Interpleader as Exhibit 1. These Answering Defendants further allege that the terms and
21 conditions of the Settlement Agreement speak for themselves. Except as expressly
22 admitted or alleged, these Answering Defendants deny, generally and specifically, each
23 of the allegations contained therein.

24 40. In answer to the allegations contained in Paragraph 40 of Plaintiff's First
25 Amended Complaint in Interpleader, these Answering Defendants lack sufficient
26 information or knowledge upon as to what Plaintiff believed, and based thereon, deny,
27
28

1 any such allegations of Plaintiff's belief's contained therein. Defendants are informed
2 and believe, however, that the remaining allegations of Paragraph 40 are true.

3 41. In answering the allegations of Paragraph 41 of Plaintiff's First Amended
4 Complaint, Answering Defendants admit the allegations contained therein.

5 42. In answer to the allegations contained in Paragraph 42 of Plaintiff's First
6 Amended Complaint in Interpleader, these Answering Defendants lack sufficient
7 information or knowledge upon as to what Plaintiff believed, and based thereon, deny,
8 any such allegations of Plaintiff's belief's contained therein. Defendants are informed
9 and believe, however, that the remaining allegations of Paragraph 42 are true.

10 43. In answer to the allegations contained in Paragraph 43 of Plaintiff's First
11 Amended Complaint in Interpleader, these Answering Defendants lack sufficient
12 information or knowledge upon as to what Plaintiff believed, and based thereon, deny,
13 such allegations. Answering Defendants, however, admit the remaining allegations of
14 Paragraph 43.

15 44. In answer to the allegations contained in Paragraph 44 of Plaintiff's First
16 Amended Complaint in Interpleader, these Answering Defendants lack sufficient
17 information or knowledge upon as to what Plaintiff believed, and based thereon, deny,
18 any such allegations of Plaintiff's belief's contained therein. Defendants are informed
19 and believe, however, that the remaining allegations of Paragraph 44 are true.
20 Answering Defendants also admit that when they signed the Interpleader Settlement I
21 they intended it to be a final and binding document.

22 45. In answer to the allegations contained in Paragraph 45 of Plaintiff's First
23 Amended Complaint in Interpleader, these Answering Defendants are informed and
24 believe that the allegations therein are true.

25 46. In answer to the allegations contained in Paragraph 46 of Plaintiff's First
26 Amended Complaint in Interpleader, these Answering Defendants are informed and
27 believe that the allegations therein are true.

1 47. In answer to the allegations contained in Paragraph 47 of Plaintiff's First
2 Amended Complaint in Interpleader, these Answering Defendants are informed and
3 believe that the allegations therein are true.

4 48. In answer to the allegations contained in Paragraph 48 of Plaintiff's First
5 Amended Complaint in Interpleader, these Answering Defendants lack sufficient
6 information or knowledge upon as to what Plaintiff believed, and based thereon, deny,
7 any such allegations of Plaintiff's belief's contained therein. Defendants are informed
8 and believe, however, that the remaining allegations of Paragraph 48 are true.

9 49. In answer to the allegations contained in Paragraph 49 of Plaintiff's First
10 Amended Complaint in Interpleader, these Answering Defendants are informed and
11 believe that the allegations therein are true.

12 50. In answer to the allegations contained in Paragraph 50 of Plaintiff's First
13 Amended Complaint in Interpleader, these Answering Defendants lack sufficient
14 information or knowledge upon as to what Plaintiff believed, and based thereon, deny,
15 any such allegations of Plaintiff's belief's contained therein.

16 51. In answer to the allegations contained in Paragraph 51 of Plaintiff's First
17 Amended Complaint in Interpleader, these Answering Defendants are informed and
18 believe that the allegations therein are true.

19 52. In answer to the allegations contained in Paragraph 52 of Plaintiff's First
20 Amended Complaint in Interpleader, these Answering Defendants are informed and
21 believe that the allegations therein are true.

22 53. In answer to the allegations contained in Paragraph 53 of Plaintiff's First
23 Amended Complaint in Interpleader, these Answering Defendants are informed and
24 believe that the allegations therein are true.

AFFIRMATIVE DEFENSES

54. These Answering Defendants assert their Affirmative Defenses, as follows, but reserve the right to assert additional affirmative defenses that may be discovered and developed through the course of discovery, or otherwise in this action.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

55. Plaintiff's First Cause of Action fails to state facts sufficient to constitute a cause of action.

SECOND AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

56. Plaintiffs Second Cause of Action fails to state facts sufficient to constitute a cause of action.

THIRD AFFIRMATIVE DEFENSE

(Unclean Hands)

57. These Answering Defendants are informed and believe, and upon such information and belief, allege that the First Amended Complaint in Interpleader, and each and every cause of action therein, is barred by the doctrine of unclean hands.

FOURTH AFFIRMATIVE DEFENSE

(Waiver)

58. These Answering Defendants are informed and believe, and upon such information and belief, allege that the First Amended Complaint in Interpleader, and each and every cause of action therein, is barred by the doctrine of Waiver. Plaintiff, by the statements, conduct, acts, omissions and acquiescence attributable to it, has waived

1 all claims and causes of action for any recovery or remedy against these Answering
2 Defendants, as alleged in the First Amended Complaint in Interpleader.

3
4 **FIFTH AFFIRMATIVE DEFENSE**

5 (Estoppel)

6 59. These Answering Defendants are informed and believe, and upon such
7 information and belief, allege that the First Amended Complaint in Interpleader, and
8 each and every cause of action therein, is barred by the doctrine of estoppel. Plaintiff, by
9 the statements, conduct, acts and omissions and attributable to it, has led these
10 Answering Defendants to believe that they would be defended and their respective legal
11 fees paid in the defense of the Underlying Lawsuit. Based thereon, these Answering
12 Defendants have secured defense counsel, which is lead counsel in the Underlying
13 Lawsuit, and incurred substantial legal fees in reliance on the promises and conduct of
14 Plaintiff.

15
16 **SIXTH AFFIRMATIVE DEFENSE**

17 (Balancing of the Equities)

18 60. The greater weight of the relative equities between the parties to this First
19 Amended Complaint in Interpleader favors these Answering Defendants.

20
21 **SEVENTH AFFIRMATIVE DEFENSE**

22 (Unjust Enrichment)

23 61. These Answering Defendants are informed and believe, and based thereon
24 allege that Plaintiff would be unjustly enriched by any recovery from these Answering
25 Defendants.

EIGHTH AFFIRMATIVE DEFENSE**(Breach of Duty)**

62. Plaintiff has at all times maintained a legal interest in the Policy, and Plaintiff is obligated by that policy to ensure the proper use of its Proceeds. Despite that obligation, beginning in the year 2013, Plaintiff ceased payment of all costs, expenses and attorneys fees incurred by these Answering Defendants during the year 2013, severely compromising the defense of these Answering Defendants. These Answering Defendants are informed and believe, and based thereon allege that the cessation of the payments referred to herein were done at the instance and request of Defendant Shasta, and that Plaintiff breached its fiduciary duty to these answering Defendants, by favoring one of its insureds over the other.

NINTH AFFIRMATIVE DEFENSE**(Failure to Join All Necessary Parties)**

63. These Answering Defendants are informed and believe, and based thereon allege, that Plaintiff has failed to join all of the necessary parties in its Interpleader action. The Policy includes additional insureds who have not been named in this action, or in the Underlying Lawsuit, but nonetheless remain beneficiaries of the policy proceeds. These Answering Defendants are further informed and believe, and based thereon allege that Conductive Technologies, Inc. may claim a right of indemnity under this policy, or that such a right has been claimed on its behalf by defendant Shasta.

TENTH AFFIRMATIVE DEFENSE**(Allocation of Costs and Attorneys Fees)**

64. These Answering Defendants deny that Plaintiff is entitled to an award of costs and attorneys fees incurred in the filing of this matter. Should the court decide to award such fees, however, they should be assessed only against the defendant Shasta

Technologies, LLC, as a result of its new and unreasonable demands for more than its fair share of the remaining Proceeds from the Policy, as set forth in Paragraph 18 of the First Amended Complaint in Interpleader.

ELEVENTH AFFIRMATIVE DEFENSE

(Civil Code Section 3391)

65. These Answering Defendants allege and state that to the extent Co-Defendant Shasta Technologies, LLC (hereafter "Shasta") attempts to seek specific performance of a the parties' terms sheet in which it is stated that Shasta's counsel, Ropers, Majeski, Kohn & Bentley (hereafter "Ropers") are entitled to \$478,000.00 of the Interpleader Funds, such claim is barred by Civil Code Section 3391, Sections (1) (2), (3) and (4).

TWELFTH AFFIRMATIVE DEFENSE

(Judicial Estoppel)

66. These Answering Defendants allege and state that under principles of judicial estoppel, Defendant Shasta Technologies, LLC is estopped from contending that its GenStrip was not a product that infringed LifeScan Scotland, Ltd.'s Patents 5,708,247 and 6,241,862.

THIRTEENTH AFFIRMATIVE DEFENSE

(Severability)

67. These Answering Defendants allege and state that the provision on the Parties' Binding Term Sheet that Defendant Shasta seeks to specifically enforce, and which pertains to the allocation and disbursement of the Interpleader Funds, is severable from the remaining provisions of the Binding Term Sheet, and may be thus analyzed and ruled upon by this Court without regard to said remaining provisions.

FOURTEENTH AFFIRMATIVE DEFENSE

(Settlement and Release)

68. These Answering Defendants allege and state that to the extent Defendant Shasta attempts to introduce evidence or argument at trial that Gotham Insurance Company breached the subject Policy of insurance by paying Shasta's defense counsel only 50% of its invoiced defense fees, Defendant Shasta settled and released this claim under the terms of the Gotham I Settlement and the provisions of Civil Code Section 1542.

PRAYER FOR RELIEF

WHEREFORE, these Answering Defendants pray as follows:

1. For Judgment in their favor and against Defendant Shasta in an amount to be determined by the Court at trial;
2. That these Answering Defendants be awarded their costs and reasonable attorneys' fees; and
3. For such other and further relief as the Court deems just and proper

DATED: 7/7, 2016

BAER & TROFF LLP

By: 

ERIC TROFF,
Attorneys for Cross-
Complainants
PharmaTech Solutions, Inc. and
Decision Diagnostics, Inc, fka
Instacare Corp.